

APR 20 2004

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**ORIGINAL**

In the Matter of )

Amendment of Section 73.202(b), )

Table of Allotments, )

FM Broadcast Stations )

(Cambridge and St. Michaels, Maryland) )

MM Docket No. 04-20

RM-10842

To: The Commission

**REPLY COMMENTS**

**CWA BROADCASTING, INC.**

Barry A. Friedman  
Thompson Hine LLP  
1920 N. Street, N.W.  
Washington, D.C. 20036  
(202) 331-8800  
Its Attorney

Dated: April 20, 2004

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## SUMMARY

In these Reply Comments, CWA Broadcasting, Inc., licensee of WINX-FM, Cambridge, Maryland, shows that the Commission should reject the Counterproposals put forward by Route 12 Community Broadcasters and MTS Broadcasting, L.C., and grant CWA's proposal to modify WINX's community of license from St. Michaels, Maryland to its original community of license, Cambridge, Maryland and upgrade its operation to Class B-1 on Channel 232. Route 12's Counterproposal to allot Channel 232A to Stockton, Maryland fails because Stockton is not a community for allotment purposes under the Commission's standards. The Stockton Proposal also fails on technical grounds – its proposed facility is short-spaced to WINX's licensed facility in violation of Commission policy. MTS's proposal to allot Channel 233A to Newark, Maryland fails because Newark is not a community for allotment purposes under the Commission's standards.

Further, even assuming the Commission confers community status on Stockton and/or Newark, both of those proposals are mutually exclusive with the Petition for Rulemaking submitted by Dana J. Puopolo requesting the allotment of Channel 233A at Chincoteague, Virginia. Conflicting proposals cannot be resolved in separate proceedings, but, pursuant to Commission policy, instead must be consolidated and considered in a further rulemaking.

Finally, CWA's Proposal does not violate the Commission's policy against removing a community's sole local service, as the St. Michael's station has never been built. CWA's proposal is clearly in line with Commission precedent holding that the removal of an unbuilt station from a community does not represent a loss of service. Accordingly, the Commission should dismiss Route 12's Stockton Counterproposal and MTS's Newark Counterproposal and grant CWA's Cambridge Proposal.

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(Cambridge and St. Michaels, Maryland)	)	

To: The Commission

**REPLY COMMENTS**

CWA Broadcasting, Inc. ("CWA"), the licensee of Station WINX-FM, Cambridge, Maryland (the "Station" or "WINX"), by its attorneys and pursuant to 1.415(c) of the Commission's Rules, hereby submits these Reply Comments in the above-referenced proceeding in which CWA seeks to modify the Station's community of license from St. Michaels, Maryland to its original community of license, Cambridge, Maryland and upgrade its operation to Class B-1 on Channel 232 (CWA's Cambridge Proposal"). CWA submits that the counterproposals put forward by MTS Broadcasting, L.C. ("MTS") and Route 12 Community Broadcasters ("Route 12"), in response to the Media Bureau's *Notice of Proposed Rulemaking*, DA 04-231, released February 13, 2004 (the "*NPRM*"), contain fundamental flaws that preclude their consideration as alternatives to CWA's Cambridge Proposal. Accordingly, MTS's and Route 12's Counterproposals should be rejected, and CWA's Cambridge Proposal should be granted. In support thereof, CWA states as follows.

I. The Commission Standard for Designating an Area a Community for Allotment Purposes

In their Counterproposals, MTS proposes the allotment of Channel 233A to Newark, Maryland (“MTS Newark Counterproposal”), and Route 12 proposes the allotment of Channel 232A to Stockton, Maryland (“Route 12 Stockton Counterproposal”). Neither Newark nor Stockton qualifies as a community for allotment purposes under the Commission’s standards, and the Commission should reject both Counterproposals on these grounds alone. The MTS Newark Counterproposal and the Route 12 Stockton Counterproposal both premise community status upon the fact that their respective communities are Census Designated Places” (“CDP”). Under Commission precedent, designation of an area as a CDP (or if the area is incorporated) raises the presumption that the area constitutes a community for allotment purposes (“CDP presumption”). *See Grants and Peralta, New Mexico*, 14 FCC Rcd 21446, 21449 (MMB 1999). The CDP presumption may be rebutted, however, upon showing that, despite an area’s CDP status, it does not possess the social, economic, or cultural characteristics that inform the Commission’s definition of a “community” for allotment purposes. *See id.*; *Stock Island, Florida*, 8 FCC Rcd 343 (MMB 1993); *East Hemet, California et al.*, 4 FCC Rcd 7895 (MMB 1989). Applying relevant Commission precedent, neither Stockton nor Newark possess the characteristics the Commission associates with a bona fide community, and, thus, neither the Route 12 Stockton Counterproposal nor the MTS Stockton Counterproposal is entitled to the CDP presumption. Given that neither counterproposal posits a viable community, both must be rejected.

In *Grants and Peralta, New Mexico, supra*, the Bureau relied on the following factors, which, taken together, outweighed the presumption of community-status afforded by Peralta, New Mexico’s listing as a CDP, as well as the fact that Peralta had a population of 3,182

persons, its own zip code, a listed post office, volunteer fire department, and numerous local establishments:

- While Peralta had its own zip code, it did not have its own independent post office (despite petitioner's claim to the contrary);
- Peralta did not have its own school system or hospital;
- Despite the presence of businesses (and a church) with "Peralta" in their names, the vast majority of residents worked outside of the area, suggesting that these establishments did not serve a self-contained population identifying itself with Peralta;
- Peralta had no local government or elected officials, offered no municipal services, had no local media, and no civic or social organizations; and
- Peralta had no separate listing for Peralta residents and businesses in the telephone book.

*See* 14 FCC Rcd at 21449. Given the absence of these important signs of an independent, identifiable community, the Bureau concluded that Peralta was not a community for allotment purposes and denied petitioner's rulemaking request. *See also Stock Island, Florida, supra* (rejecting Stock Island as a community despite its CDP status and presence of volunteer fire department, businessman's association, and neighborhood improvement program, because petitioner failed to demonstrate that any of the business, political, social or commercial organizations identified themselves with Stock Island); *East Hemet, California, et al., supra* (rejecting East Hemet as a community because petitioner failed to demonstrate that East Hemet had the social, economic or cultural indicia qualifying it as a community for allotment purposes).

## II. Route 12 Stockton Counterproposal

In the instant proceeding, Stockton, Maryland, like Peralta, New Mexico, lack the social, economic and cultural indicia that qualify an area as a community for allotment purposes.

According to Route 12, Stockton, a non-incorporated CDP with a Census 2000 population of 143

persons, has a separate zip code, a post office, a volunteer fire department, and some churches and businesses. However, this evidence on its own fails to establish the existence of a community for allotment purposes. *See Grants and Peralta, New Mexico, supra* (rejecting Peralta as a community notwithstanding that it had its own zip code, post office, volunteer fire department, and local establishments). Route 12 fails to show that any of the establishments it lists actually identify themselves specifically with Stockton, or that Stockton in any way has a geographically identifiable population grouping. Among the establishments listed by Route 12, only two (the Stockton Volunteer Fire Department and the Stockton Sportsmen Club) even have Stockton in their name. This is virtually the only evidence offered by Route 12 to suggest that any of these establishments identify themselves with Stockton, and, as Commission precedent demonstrates, inclusion of the name of the alleged community in the name of a local establishment does not suffice on its own to show the presence of a community for allotment purposes. *See Grants and Peralta, New Mexico, supra*. While Route 12 attributes a post office to Stockton, it fails to demonstrate that this post office is unique to, serves, or identifies specifically with, Stockton. In any case, the Commission has held that the mere presence of a post office is not enough to demonstrate the existence of a bona fide community. *See Rockport, Texas et al.*, 4 FCC Rcd 8075, 8076 (1989) (fact that Armstrong, Texas had its own post office not enough to establish Armstrong as community).

Further, Route 12 fails to demonstrate where these establishments are located, other than listing street addresses. No map is provided to show exactly where the establishments are to be found. Given that Stockton is unincorporated, Route 12 bears the burden of demonstrating that these establishments are actually located in, and identify with, the designated area. For example, Route 12 lists the location of St. John's Holy Church as Saint John's Road. This description fails

to suggest in any way that this church is located in the Stockton “community,” and that it specifically identifies itself with Stockton or that the residents of Stockton view the church as an integral part of the Stockton “community.” Instead, this description suggests that the church serves a rural population that does not specifically identify itself with a particular community. The evidence presented by Route 12 to show that Stockton is a community instead demonstrates that it is an “expanded rural area” without the social, economic, or cultural indicia warranting an allotment. *See Broadview, Montana*, 14 FCC Rcd 14101 (1999) (rejecting Broadview as a community where petitioner failed to demonstrate that listed establishments were “intended to serve Broadview, as opposed to an expanded rural area”). A number of the “establishments” cited by Route 12 appear to consist in a business operated out of or associated with a personal residence. Calls placed to the telephone numbers provided by Route 12 revealed that the Fireplace Supply Co. consists of a showroom in the back of a personal residence, and the voicemail for Ayres Seafood, Hair Loft, and DTK Landscaping & Property Maintenance consisted of a personal residence message. *See Declaration of Sharon McDonald*, attached hereto as Exhibit A; *Broadview, Montana, supra*; *Gaviota, California*, 16 FCC Rcd 1518, 1522 (2000) (rejecting Gaviota as a community where petitioner failed to demonstrate nexus between establishments and the community in question).<sup>1</sup>

Indeed, the absence of relevant evidence demonstrates that Stockton is not a community as defined by the Commission. As in *Grants and Peralta, New Mexico*, Stockton has no school system or hospital, no local government or elected officials, no local media and no civic or social organizations, and it offers no municipal services. Stockton does not have its own listing in the local phonebook. *See Exhibit B*. And, significantly, most residents work outside the area. *See*

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<sup>1</sup> Despite the opportunity to do so, Route 12 did not offer any testimony of local residents attesting to Stockton’s community status. *See Stock Island, Florida, supra*.



Exhibit C (average commute time of persons residing in Stockton is 24.4 minutes); *Grants and Peralta, New Mexico, supra*; *Danville and Nonesuch, Kentucky*, 18 FCC Rcd 9304, 9306 (MMB 2003). Stockton clearly lacks the social, economic, and cultural attributes that define a community. Stockton's CDP status clearly cannot trump the complete absence of "community" characteristics and the fact that only 143 persons reside in the CDP, and the Route 12 Stockton Counterproposal should therefore be rejected.

Even assuming that the Commission finds that Stockton has the requisite community status, the Route 12 Stockton Counterproposal is fatally flawed, from an engineering perspective, and must be denied. As demonstrated by the Engineering Statement attached hereto as Exhibit D, the Route 12 Stockton Counterproposal must be rejected because the facility proposed therein is short-spaced to the licensed WINX facility. Given this short-spacing, implementation of the Route 12 Stockton Counterproposal would require the Commission to order CWA to relocate its transmitter site to a new site. Aside from the sheer impracticality of this, it violates Commission precedent. The Commission "refrain[s] from requiring a transmitter site change by an unwilling licensee or permittee." *Rockport, Texas et al., supra*. The fact that Route 12's proposed facility is short-spaced to the licensed WINX facility stands as further reason for the Commission to reject the Route 12 Stockton Counterproposal in the instant proceeding.<sup>2</sup>

### III. MTS Newark Counterproposal

Newark, Maryland also lacks the social, economic and cultural elements that comprise a community. According to MTS, Newark, a non-incorporated CDP with a Census 2000 population of 339, has its own zip code, post office, a couple of churches and a few businesses.

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<sup>2</sup> As noted below, the Route 12 Stockton Counterproposal may be considered in connection with the request for a new allotment of Channel 233A at Chincogteague, Virginia, so long as CWA's Cambridge Proposal is not likewise considered.

However, as stated above, these attributes are not enough to qualify an area as a community for allotment purposes. *See Grants and Peralta, New Mexico, supra; Rockport, Texas et al., supra.* And MTS in no way demonstrates that the establishments located in Newark identify themselves with Newark per se, or otherwise indicate the existence of a community for allotment purposes.<sup>3</sup> In referencing Newark's post office, MTS provides as its address a post office box. There is no indication that this post office box independently serves or otherwise identifies with Newark, and, assuming *arguendo* that it does, this is far from dispositive. *See Rockport, Texas et al., supra.* As for the Newark Volunteer Fire Department, the evidence provided by MTS shows that it serves a primarily rural, 50 square mile area. This hardly serves as evidence of Newark's status as a self-contained, independent community. *See Broadview, Montana, supra.* None of the establishments cited by MTS contain Newark in their name save one – Newark Station – which MTS claims is a grocery store, but which the clerk answering Newark Station's telephone identified as a gas station. *See McDonald Declaration, supra.* The solid waste site cited by MTS is called Worcester County Solid Waste,<sup>4</sup> and the school cited by MTS is called Worcester Career & Tech Center – both entities are operated by Worcester County and serve the County at large rather than Newark itself.

Like Route 12, MTS fails to provide any map demonstrating that these establishments are actually located in, and identify with, the designated area, despite Newark's unincorporated status, and, accordingly, the relevance of MTS's evidence is at issue. Further, Newark has no school system or hospital, no local government or elected officials, no local media and no civic or social organizations, and it offers no municipal services. Newark does not have its own listing

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<sup>3</sup> Likewise, as discussed in n. 1, *supra*, MTS did not offer testimony of local residents in support of Newark's community status.

<sup>4</sup> One would be hard pressed to consider a garbage dump an indicator of community status.

in the local phonebook. *See* Exhibit B. And, significantly, most residents work outside the area. *See* Exhibit E (average commute time of persons residing in Newark is 32.1 minutes); *Grants and Peralta, New Mexico, supra*; *Danville and Nonesuch, Kentucky, supra*. Newark's lack of the important social, economic, and cultural attributes that define a community rebuts its status as a CDP. The MTS Newark Counterproposal should therefore be rejected on grounds that Newark does not qualify as a community for allotment purposes.<sup>5</sup>

#### IV. The Puopolo Chincoteague Proposal

Even assuming, *arguendo*, that Stockton and Newark constitute communities, the instant Counterproposals are still not ripe for consideration. After CWA filed its petition for rulemaking in the instant proceeding, Dana J. Puopolo ("Puopolo") filed a petition for rulemaking requesting the allotment of Channel 233A at Chincoteague, Virginia ("Puopolo Chincoteague Proposal").<sup>6</sup> As evidenced by the attached Engineering Statement, the Puopolo Chincoteague Proposal is mutually exclusive with both the Route 12 Stockton Counterproposal and the MTS Newark Counterproposal. Commission policy generally requires that conflicting proposals be consolidated in a single Notice of Proposed Rulemaking for further consideration. *See Amendment of the Commission's Rules Regarding FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7098 (1990); *see also Eatonville, Georgia et al. and*

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<sup>5</sup> The cases cited by MTS in support of its Counterproposal are unavailing. In *Encino, Texas*, 18 FCC Rcd 23984 (MB 2003), petitioner demonstrated community status through the presence of an elementary school, volunteer fire department, post office, churches, and numerous businesses whose nexus to Encino was not disputed. In *Marathon and Mertzon, Texas*, 18 FCC Rcd 23986 (MB 2003), petitioner demonstrated community status through the presence of local elementary and high schools, a public library, churches, a bank, restaurants, a law office, a health center and numerous other businesses whose nexus to Marathon was not disputed. In the instant matter, CWA has shown that the supposed economic, social, and cultural ties between Newark and the few organizations listed by MTS are specious.

<sup>6</sup> The Puopolo Chincoteague Proposal was submitted on September 26, 2003, and is not yet the subject of a Notice of Proposed Rulemaking. *See* Exhibit F.

*Ashland, Alabama*, Notice of Proposed Rulemaking, 7 FCC Rcd 6805 (MMB 1992); *Eatonville, Georgia et al. and Ashland, Alabama*, Report and Order, 8 FCC Rcd 4938 (MMB 1993). Given the mutual exclusivity of the MTS Newark Counterproposal with the Route 12 Stockton Proposal, the CWA Cambridge Proposal and with the Puopolo Chincoteague Proposal,<sup>7</sup> the CWA and Chincoteague Proposals and the MTS Counterproposal would need to be consolidated in one NPRM for consideration. Thus, if the Commission were to consider Newark a valid community, the Newark Counterproposal would need to be weighed against the Chincoteague Proposal and the CWA Cambridge Proposal in a further rulemaking proceeding.<sup>8</sup> See 47 C.F.R. § 1.421.

V. The CWA Cambridge Proposal

Finally, MTS's suggestion that the CWA Cambridge Proposal will result in the removal of local service from St. Michaels, in violation of Commission policy, is wide of the mark. As set forth by CWA in its Petition for Rulemaking, the CWA Cambridge Proposal fully complies with Commission policy with regard to the St. Michaels allotment. In connection with its FM allotment priorities, the Commission prohibits the removal of a community's sole operating local service on grounds that such a change presumptively disserves the public interest. See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to*

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<sup>7</sup> The CWA Cambridge Proposal and the Puopolo Chincoteague Proposal are not mutually exclusive with one another, and, since the Route 12 Stockton Counterproposal and the MTS Newark Counterproposal fail for want of a viable community, CWA's Cambridge Proposal can be granted without any consideration of the Puopolo Chincoteague Proposal. If Stockton and Newark are considered communities, the Route 12 Stockton Proposal still fails vis-à-vis the CWA Cambridge Proposal on technical grounds, and cannot be considered in connection with the CWA Cambridge Proposal.

<sup>8</sup> In the event the Commission designates Newark a bona fide community, and subsequently issues a NPRM involving all the mutually exclusive proposals and counterproposals discussed herein, CWA will, at that time, address the Section 307(b) considerations raised by MTS.

*Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094, 7096 (1990) (“*Community Modification Reconsideration*”). However, as the Commission itself has determined, removal of an unconstructed station from a community does not present the same concerns as the loss of service represented by the removal of an operating station. See *Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (MMB 1995); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (MMB 1993); and *Glencoe and LeSueur, Minnesota*, 7 FCC Rcd 7651 (MMB 1992). In the case of an unbuilt Station, the community has not experienced local transmission service and or developed reliance thereon, therefore reallocation of an unbuilt station such as WINX cannot be construed as a loss, and the “no removal” rule need not be applied. *Id.*

As set forth in its Petition for Rulemaking, CWA has never modified its license to specify St. Michaels, or constructed a facility based on service to St. Michaels. Similarly, the Commission has never changed the Station’s community of license in its own database – the CDBS database evidences Cambridge, not St. Michaels, as the Station’s community of license. See Petition for Rulemaking, Exhibit A. Because no license has issued for the St. Michaels facility, and because that facility was never constructed, reallocation of the Station does not violate the Commission’s “no removal” policy. MTS’s suggestion that CWA’s actions somehow render it ineligible for the unbuilt station exception is completely without basis. The history of CWA’s actions vis-à-vis the Cambridge-St. Michaels allotments has always been, and remains, a matter of Commission record. That record clearly evidences CWA’s complete candor with and disclosure to the Commission. Accordingly, MTS’s claim is without merit, and the St. Michaels allotment should be treated as unbuilt Station in conformance with standard Commission policy.

As further shown in the Petition for Rulemaking, the prohibition on removing a sole service should not apply here where CWA is proposing a return to the Station's original allotment under the FM Table of Allotments, rather than an amendment thereof. As described in the Petition for Rulemaking, the change in the Station's community of license to St. Michaels was undertaken on the basis of a technical problem unrelated to the Commission's allotment priorities. The technical problem was disposed of long ago, and with it the need to modify the Table of Allotments. Under the Station's current broadcast operations, St. Michaels does not, practically-speaking, receive first local transmission service from the Station. Instead, CWA has operated the Station in a manner consistent with designation of Cambridge as its local community. Accordingly, the public interest would be served by the return of the Station's community of license to Cambridge. The respective public benefits of the Cambridge and St. Michaels allotments are such that the Media Bureau preferred the Cambridge allotment in creating the FM Table of Allotments. And, as set forth in the Petition for Rulemaking, and in the attached Engineering Statement, the upgrade of the Station to a Class B1 facility proposed by CWA would not diminish current service to St. Michaels. Instead, the proposed community change together with the proposed upgrade would result in a net service gain while improving the level of service to St. Michaels, and would thus better serve the public interest. Further, the gain areas identified by the Bureau, including the underserved areas contained therein, provide additional support for CWA's Cambridge Proposal. *See NPRM* at ¶ 6.

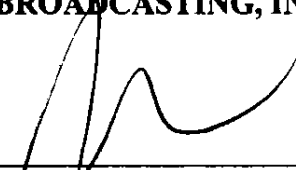
In conclusion, CWA submits that the Route 12 Stockton Counterproposal and the MTS Newark Counterproposal should be dismissed on grounds that neither Stockton nor Newark qualifies as a community for allotment purposes. In the absence of any valid Counterproposals, the CWA Cambridge Proposal should be granted for the reasons identified in CWA's Petition for

Rulemaking and in the *NPRM*. Should the Commission deem Stockton and/or Newark bona fide communities, then the Commission must institute a new proceeding in which the mutually exclusive proposals and counterproposals discussed herein can be considered together and a decision made on relevant Section 307(b) criteria.

WHEREFORE, for the foregoing reasons, CWA Broadcasting, Inc. respectfully requests that the Commission grant the Petition for Rulemaking and modify Section 73.202(b) of the Commission's Rules to change the channel 232 allotment from St. Michaels to Cambridge, Maryland, upgrade the allotment from Class A to Class B1, and modify the license of Station WINX-FM accordingly.

Respectfully submitted,

**CWA BROADCASTING, INC.**

By:   
Barry A. Friedman, Esq.  
Thompson Hine LLP  
1920 N Street, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 331-8800

April 20, 2004

## **EXHIBIT A**



### **DECLARATION**

I, Sharon McDonald, declare under penalty of perjury that the following is true and correct:

1. I am a paralegal at the law firm of Thompson Hine, LLP.
2. On April 20, 2004, I placed calls to the Stockton, Maryland organizations listed in the Comments provided by Route 12 Community Broadcasters, and to the Newark, Maryland organizations listed in the Comments provided by MTS Broadcasting, L.C. The statements contained in the instant Reply Comments concerning the results of my phone calls are true and correct.
3. Executed at Washington, D.C. on this 20<sup>th</sup> day of April, 2004.

  
Sharon McDonald

## EXHIBIT B

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**Circulation:** 108,000  
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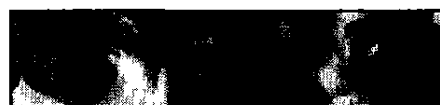
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## **EXHIBIT C**



# U.S. Census Bureau American FactFinder

## FACT SHEET

### Stockton CDP, Maryland

#### Highlights from the Census 2000 Demographic Profiles:

<b>General Characteristics - show more &gt;&gt;</b>					
	Number	Percent	U.S.		
Total population	143	100.0	100%	map	brief
Male	57	39.9	49.1%	map	brief
Female	86	60.1	50.9%	map	brief
Median Age (years)	37.3	(X)	35.3	map	brief
Under 5 years	6	4.2	6.8%	map	
18 years and over	106	74.1	74.3%		
65 years and over	23	16.1	12.4%	map	brief
One race - Total	142	99.3	97.6%		
White	53	37.1	75.1%	map	brief
Black or African American	87	60.8	12.3%	map	brief
American Indian and Alaska Native	2	1.4	0.9%	map	brief
Asian	0	0.0	3.6%	map	brief
Native Hawaiian and Other Pacific Islander	0	0.0	0.1%	map	brief
Some other race	0	0.0	5.5%	map	
Two or more races	1	0.7	2.4%	map	brief
Hispanic or Latino (of any race)	0	0.0	12.5%	map	brief
Average household size	2.92	(X)	2.59	map	brief
Average family size	3.23	(X)	3.14	map	
Total housing units	55	100.0	100.0%	map	
Occupied housing units	49	89.1	91.0%		brief
Owner-occupied housing units	38	77.6	66.2%	map	
Renter-occupied housing units	11	22.4	33.8%	map	brief
Vacant housing units	6	10.9	9.0%	map	
<b>Social Characteristics - show more &gt;&gt;</b>					
	Number	Percent	U.S.		
Population 25 years and over	49	100.0			
High school graduate or higher	17	34.7	80.4%	map	brief
Bachelor's degree or higher	0	0.0	24.4%	map	
Civilian veterans (civilian population 25 years and older)	0	0.0	12.7%	map	brief
Disability Status (population 21 to 64 years)	15	42.9	19.2%	map	brief
Foreign Born	0	0.0	11.1%	map	brief
Now Married (population 15 years and over)	32	38.6	54.4%		brief
Speak a language other than English at home (5 years and older)	0	0.0	17.9%	map	brief
<b>Economic Characteristics - show more &gt;&gt;</b>					
	Number	Percent	U.S.		
In Labor Force (16 years and older)	66	79.5	63.9%		brief
Mean travel time to work in minutes (16 years and older)	24.4	(X)	25.5	map	
Median household income (dollars)	14,583	(X)	41,994	map	
Median family income (dollars)	25,833	(X)	50,046	map	
Per capita income (dollars)	5,776	(X)	21,857	map	
Families below poverty level	11	42.3	9.2%	map	brief
Individuals below poverty level	54	45.0	12.4%	map	
<b>Housing Characteristics - show more &gt;&gt;</b>					
	Number	Percent	U.S.		
Single-family owner-occupied homes	8	100.0			
Median value (dollars)	12,500	(X)	119,600	map	brief
Median of selected monthly owner costs	(X)	(X)			
With a mortgage	0	(X)	1,088	map	
Not mortgaged	125	(X)	295		

## EXHIBIT D

## **ENGINEERING STATEMENT**

prepared for

**CWA Broadcasting, Inc.**  
WINX-FM Cambridge, Maryland  
Facility ID 14774

### **Introduction**

This Engineering Statement has been prepared on behalf of *CWA Broadcasting, Inc.* ("*CWA*") licensee of FM radio station WINX-FM, Channel 232A, which is licensed to Cambridge, MD, but allotted to St. Michaels, MD (File Numbers BLH-19990715KB and BRH-20030530ADC). This Statement is in support of *CWA*'s attempt to rectify this long-standing peculiarity, as well as to request an upgrade from Class A to Class B1.

Channel 232A was initially allotted to Cambridge, Maryland. A Construction Permit ("CP") was issued to construct, but due to zoning issues, it was determined that no transmitter site was then available which would permit city grade coverage over Cambridge. *CWA* requested that the FM Table of Allotments be amended to specify St. Michaels, MD as the city of license. A site which would cover Cambridge, MD later became available, and the site was authorized before the St. Michaels allotment was adopted. The Cambridge facility was subsequently built and licensed and is currently in use

*CWA* has a petition before the Commission to restore the allotment of Channel 232A from St. Michaels, MD to Cambridge, MD on the basis that the technical reason for the allotment change has been rectified, and because a CP was never initiated for a St. Michaels facility. This Petition includes a request to upgrade the allotment for Channel 232 at Cambridge, Maryland to Class B1.

### **City Grade Coverage of Cambridge and St. Michaels**

City grade coverage was studied for the existing licensed WINX transmitter location as a Class A facility. The licensed WINX Class A 70 dB $\mu$  principal community coverage contour completely encompasses the city of Cambridge, MD. Thus, this site complies with §73.315 of the Rules for a transmitter site location as it relates to Cambridge, MD.

## ENGINEERING STATEMENT

(page 2 of 5)

The WINX licensed facility was also studied for 3.16 mV/m 70 dB $\mu$  contour coverage over the community of St. Michaels, MD. The standard FCC method for determining contour coverage was used, as well as an alternate Longley-Rice method for predicting coverage. The standard FCC 70 dB $\mu$  contour does not encompass the community of St. Michaels. However, further evaluation of the existing situation revealed that a supplemental (alternative) prediction method may be used to determine the 70 dB $\mu$  coverage because of the extremely flat terrain between the transmitter site and the community of St. Michaels. Better than average propagation conditions thus exist, such that the actual signal strength may extend further than as predicted with the standard FCC Curves and the inherent 50 meters of terrain roughness ( $\Delta h$ ). For the terrain profile through St. Michaels, the calculated  $\Delta h$  is 0.6 meters, which meets the Commission's definition of terrain which "departs widely" from the average<sup>1</sup>. Therefore, an alternative propagation prediction model considered by the Commission, Longley-Rice ITM, may be used here to show that St. Michaels will be completely covered by signal levels of at least 70 dB $\mu$  by the currently licensed WINX facility.<sup>2</sup> The WINX 70 dB $\mu$  contour based on the Longley-Rice propagation model as described, does completely encompass the community of St. Michaels, Maryland.

It is the intention of CWA to have its community of license restored to Cambridge, MD. However, in the event that the allocation for Channel 232A remains at St. Michaels, the WINX transmitter location will not be moved to accommodate the community change, as both communities are covered from its current location. It is not warranted at this time to provide a showing of

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<sup>1</sup>See BPH-20000316ACF, KMAG-FM, Topeka, KS

<sup>2</sup>The Longley-Rice ITM computer program input data includes a location variability of 50%, a time variability of 50%, a situation variability of 50%, horizontal polarization, 0.005 S/m conductivity, a climate constant of 15, an assumption of continental temperate climate zone, a receive antenna height of 9 meters, a terrain profile step size of 0.1 km and a grid cell size of 1 km. A sample of the myriad calculations performed are discussed in the 1995 booklet released by the National Telecommunications and Information Administration ("NTIA"): George Hufford, *The ITS Irregular Terrain Model, version 1.2.2 - The Algorithm* and the associated booklet - *The Irregular Terrain Model*, January 26, 1999. The Commission has commonly accepted and even adopted the Longley-Rice Model for a variety of purposes where terrain conditions deviate significantly from those considered suitable for a national average for an all purpose propagation prediction tool such as the FCC Curves of §73.333



## **ENGINEERING STATEMENT**

(page 3 of 5)

coverage, but in the event that it becomes necessary, such showing will be made.<sup>3</sup> Thus, any subsequently proposed facilities or proposed rulemakings must protect the spacing requirements of the currently licensed facility.

### **Chincoteague, Virginia Ch. 233A Proposal**

Subsequent to the Petition for Rulemaking initiated by *CWA* for WINX, the FCC received a Petition for Rulemaking on September 26, 2003, to add Channel 233A to the community of Chincoteague, Virginia ("Chincoteague"). A site, located in Chincoteague, was identified which meets all the spacing requirements for a Class A facility on Channel 233. Their showing included a study which indicates that their site also meets the spacing requirements toward WINX as a Class B1 facility. Therefore, subsequent proposals must protect the proposal for Chincoteague, VA as long as it remains a viable proposal.

### **Stockton, Maryland Ch. 232A Spacing Considerations**

On March 25, 2004, a counterproposal to *CWA*'s Petition for Rulemaking was received by the Commission which proposed a co-channel (Ch. 232) Class A facility for Stockton, Maryland ("Stockton"). The proposed facility is just clear of the spacing requirements of the 1992 St. Michaels reference site, but is short spaced to the licensed WINX-FM (Class A) facility, the proposed WINX Class B1 facility and reference point, and the proposed Chincoteague reference point. There is no location from which a Channel 232 Class A facility may cover the community of Stockton, Maryland, and be properly spaced to the currently licensed WINX-FM transmitter site. As WINX does not propose to change its transmitter location, the Stockton, Maryland proposal cannot be considered.

### **Newark, Maryland Ch. 233A Spacing Considerations**

On April 5, 2004, another counterproposal to *CWA*'s Petition was received by the Commission. This proposal is for a first adjacent facility to cover Newark, Maryland on

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<sup>3</sup>Longley-Rice coverage details, as well as gain/loss and comparative service studies are not warranted but will be made available to Commission Staff upon request.

## **ENGINEERING STATEMENT**

(page 4 of 5)

Channel 233 as a Class A station ("Newark"). The proposal is properly spaced to the licensed WINX operation as a Class A, but is not properly spaced to the proposed WINX Class B1 proposal, nor is it properly spaced to the Chincoteague or Stockton proposals. There is no location from which a Channel 233 Class A facility may cover Newark and be fully spaced to the proposed WINX Class B1 facility. There is no location from which a Channel 233 Class A facility may cover Newark and be fully spaced to the Chincoteague proposal. There is no location from which a Channel 233 Class A facility may cover Newark and be fully spaced to the Stockton proposal.

### **Spacing Conclusions**

The licensed WINX transmitter site can be shown to cover either Cambridge, Maryland, or St. Michaels, Maryland from its existing location. *CWA* intends to remain at its current transmitter site in the undesired event that the FCC should decide to retain St. Michaels as the Channel 232A allocation. *CWA* is requesting to upgrade to a Class B1 from its existing site to greatly improve its level of service to the St. Michaels and Cambridge, Maryland areas.

The Chincoteague, VA, Stockton, MD, and Newark, MD proposals are all mutually exclusive to one another. The Chincoteague proposal is not mutually exclusive to either the currently licensed WINX, or the proposed WINX as a Class B1 facility. The Stockton proposal is mutually exclusive with the licensed WINX facility, the proposed WINX Class B1 facility, the proposed Newark facility, and the Chincoteague proposal. The Newark proposal is not mutually exclusive with the currently licensed WINX facility, but is mutually exclusive with the proposed WINX Class B1 facility, and the proposed Stockton and Chincoteague facilities.

### **Other Considerations**

Some discussion has ensued regarding the "loss of service" to St. Michaels, Maryland, and even a lack of service since the amendment to the FM Table of Allotments. These arguments should be considered invalid for two reasons. First, since neither a CP was authorized nor was a facility built in response to the St. Michaels allocation, there is no "loss" to consider and resolve by correcting the above mentioned allocation/license peculiarity. Second, because it can be shown that

## **ENGINEERING STATEMENT**

(page 5 of 5)

both Cambridge and St. Michaels are covered with the requisite 70 dB $\mu$  contour from the currently licensed transmitter site, required service has been provided, and will continue to be provided to both communities.

### **Certification**

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Clinton is a staff engineer in the firm of Cavell, Mertz & Davis, Inc.



Robert J. Clinton  
April 20, 2004

Cavell, Mertz & Davis, Inc.  
7839 Ashton Avenue  
Manassas, VA 20109  
(703) 392-9090

## EXHIBIT E



U.S. Census Bureau  
American FactFinder

# FACT SHEET

## Newark CDP, Maryland

### Highlights from the Census 2000 Demographic Profiles:

#### General Characteristics - show more >>

	Number	Percent	U.S.		
Total population	339	100.0	100%	map	brief
Male	170	50.1	49.1%	map	brief
Female	169	49.9	50.9%	map	brief
Median Age (years)	43.2	(X)	35.3	map	brief
Under 5 years	15	4.4	6.8%	map	
18 years and over	259	76.4	74.3%		
65 years and over	54	15.9	12.4%	map	brief
One race - Total	333	98.2	97.6%		
White	262	77.3	75.1%	map	brief
Black or African American	67	19.8	12.3%	map	brief
American Indian and Alaska Native	0	0.0	0.9%	map	brief
Asian	0	0.0	3.6%	map	brief
Native Hawaiian and Other Pacific Islander	0	0.0	0.1%	map	brief
Some other race	4	1.2	5.5%	map	
Two or more races	6	1.8	2.4%	map	brief
Hispanic or Latino (of any race)	5	1.5	12.5%	map	brief
Average household size	2.46	(X)	2.59	map	brief
Average family size	2.87	(X)	3.14	map	
Total housing units	152	100.0	100.0%	map	
Occupied housing units	135	88.8	91.0%		brief
Owner-occupied housing units	123	91.1	66.2%	map	
Renter-occupied housing units	12	8.9	33.8%	map	brief
Vacant housing units	17	11.2	9.0%	map	

#### Social Characteristics - show more >>

	Number	Percent	U.S.		
Population 25 years and over	252	100.0			
High school graduate or higher	195	77.4	80.4%	map	brief
Bachelor's degree or higher	26	21.4	24.4%	map	
Civilian veterans (civilian population 25 years and older)	62	23.1	12.7%	map	brief
Disability Status (population 21 to 64 years)	58	25.1	19.2%	map	brief
Foreign Born	0	0.0	11.1%	map	brief
Now Married (population 15 years and over)	171	61.1	54.4%		brief
Speak a language other than English at home (5 years and older)	0	0.0	17.9%	map	brief

#### Economic Characteristics - show more >>

	Number	Percent	U.S.		
In Labor Force (16 years and older)	227	82.2	63.9%		brief
Mean travel time to work in minutes (16 years and older)	32.1	(X)	25.5	map	
Median household income (dollars)	38,333	(X)	41,994	map	
Median family income (dollars)	37,250	(X)	50,046	map	
Per capita income (dollars)	18,478	(X)	21,857	map	
Families below poverty level	6	6.1	9.2%	map	brief
Individuals below poverty level	28	8.0	12.4%	map	

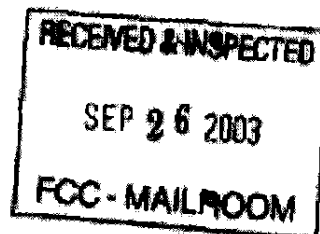
#### Housing Characteristics - show more >>

	Number	Percent	U.S.		
Single-family owner-occupied homes	117	100.0			
Median value (dollars)	100,200	(X)	119,600	map	brief
Median of selected monthly owner costs	(X)	(X)			
With a mortgage	744	(X)	1,088	map	
Not mortgaged	234	(X)	295		

## EXHIBIT F

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554



In the matter of )  
Amendment of Section 73.202 (b), ) MB Docket No. \_\_\_\_\_  
Table of Allotments )  
FM Broadcast Stations ) RM- \_\_\_\_\_  
Chincoteague, Virginia) )

**PETITION FOR RULEMAKING**

To the Chief, Allocations Branch:

1. Dana J. Puopolo ("Petitioner") respectfully requests the Commission initiate a rulemaking proceeding for the purpose of considering amending Section 73.202(b) of the Commission's rules. In support whereof the following is stated.

2. Petitioner proposes the Commission allot FM channel 233A to Chincoteague, VA as its second local service. This would require amending Section 73.202(b) of the Commission's rules as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Chincoteague, VA	243A	233A, 243A

3. Chincoteague is an incorporated town located in SE Virginia. It is located in Accomack County. In 2000, the United States Census Bureau estimated Chincoteague had a population of 4317 persons.

4. FM channel 233A can be assigned to Chincoteague in full compliance with the Commission's minimum distance separation requirements without a site restriction. This is illustrated in the attached spacing study, which lists stations and assignments within 240 kilometers. Coordinates used are N 37:56:05, W 75:22:04. Petitioner is confident he can find a suitable transmitter site for this allotment if it is assigned as proposed.

5. Petitioner, or an entity with which he is affiliated, intends to apply for a construction permit to activate channel 233A if it is assigned to Chincoteague as proposed. If his application is granted, he shall promptly construct and operate the proposed station.

6. Petitioner hereby verifies and affirms that the statements given in this petition for rulemaking are his, and are accurate to the best of his knowledge.

Respectfully submitted,



Dana J. Puopolo  
2134 Oak St., Unit C  
Santa Monica, CA 90405  
September 18, 2003

No. of Copies rec'd 0+4  
Unit ABCDE


FM-MB  
03-942

**CERTIFICATE OF SERVICE**

I, John C. Butcher, hereby certify that I have served on this 20<sup>th</sup> day of April, 2004, a copy of the foregoing **Reply Comments** upon the following parties by first-class mail, postage pre-paid:

Lewis J. Paper  
Andrew S. Kersting  
Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, N.W.  
Washington, D.C. 20037-1526

Cary S. Tepper  
Booth, Freret, Imlay & Tepper, P.C.  
7900 Wisconsin Avenue  
Suite 304  
Bethesda, MD 20814-3628



John C. Butcher

\*By Hand